

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1, 2, 5, 6, 8, and 11-17 are now pending in this application. Claims 1 and 6 are herein amended. Support for such amendment is found at least in claims 3, 4, 9, and 10, which are herein canceled without prejudice. No new matter is added.

In the outstanding Office Action, the Office rejected claim 6 and the claims depending therefrom under 35 U.S.C. § 112, second paragraph as indefinite because “higher” was not defined in the specification. While Applicants maintain that one skilled in the art would understand what is meant by this term in light of the specification, Applicants herewith delete this term from claim 6. With such deletion, the rejections for indefiniteness are obviated. Applicant requests withdrawal of such rejections.

Further regarding claim 6, the Office asserts on page 2 of the outstanding Office Action that claim 6 was not correctly designated and marked in the March 17, 2009 response. Applicant herewith submits as Exhibit 1 its Amendment filed December 31, 2007, which shows claim 6 with the amendment that resulted in claim 6 as submitted in the March 17, 2009 response. Applicant further submits the Advisory Action of January 29, 2008, in which the Office indicated on page 2 that the proposed amendments in the December 31, 2007 response were entered. Thus, it is Applicant’s understanding that its description and marking of claim 6 in the March 17, 2009 response was correct. Moreover, Applicant notes that claim 6 is amended in the present response, with the amendment based on Applicant’s understanding that the December 31, 2007 amendment was entered. That said, if the Office requires any further action on the part of the Applicant, Applicant is happy to be advised of the required action.

The Office withdrew its rejections of claims 1-4, and 8-11 as obvious over JP- 2001-072764 (hereinafter “JP-‘764”) and/or JP-‘764 in view of JP-2001-354542 (hereinafter “JP-‘542”). However, the Office rejects claims 1-5 and 12-14 as obvious over JP-‘542 in view of JP-‘764 as evidenced by Kunioka and Robinson, U.S. Patent No. 5,968,500. The Office also rejects claims 6, 8-11, and 15-17 as obvious over JP-‘542 in view of Sheppard, U.S. Patent No. 4,847,078, as evidenced by Kunioka. Claims 1, 2, and 5 were rejected as obvious over Irizato, U.S. Patent No. 5,986,042. Applicant herein amends claim 1, from which claims 2, 5, and 12-14 depend, and claim 6, from which claims 8, 11, and 15-17 depend. Applicant believes such amendment obviates the outstanding obviousness rejections.

Claims 1, 2, and 5 were rejected as obvious over Irizato. Amended claim 1 is directed to a cosmetic material comprising a crosslinked product of poly- γ -glutamic acid and/or a crosslinked product of a poly- γ -glutamic acid salt. The crosslinked product has a particle size of 0.1 to 100 μm with an average particle size of 1 to 50 μm . The crosslinked product is produced by exposing at least one solution selected from the group consisting of an aqueous solution, a methyl alcohol solution and an ethyl alcohol solution of poly- γ -glutamic acid or the poly- γ -glutamic acid salt which contain poly- γ -glutamic acid in an amount of 1 to 30% by mass, to electron beam radiation for crosslinking thereof. The claims are amended to recite that the radiation used to effect the crosslinking is electron beam radiation. As shown by the Declaration of Mr. Ito submitted on November 16, 2006, the oil dispersing ability of crosslinked product of poly- γ -glutamic acid in which the crosslinking is effected by electron radiation is surprisingly superior to products of prior art methods of cross-linking poly- γ -glutamic acid.

A claimed invention can only be found obvious if there is “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir.

2006). Moreover, every word in a claim must be considered in determining the question of patentability against the prior art. *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970). With this in mind, the Irizato reference does not teach the claimed invention at least because Irizato does not teach that the crosslinked product is produced by exposing at least one solution selected from the group consisting of an aqueous solution, a methyl alcohol solution and an ethyl alcohol solution of poly- γ -glutamic acid or the poly- γ -glutamic acid salt which contain poly- γ -glutamic acid in an amount of 1 to 30% by mass, to electron beam radiation for crosslinking thereof. Moreover, products crosslinked by use of electron radiation are surprisingly more effective in oil dispersing ability. Applicant, accordingly, requests withdrawal of this rejection.

Claims 1-5 and 12-14 were rejected as obvious over JP-‘542 in view of JP-‘764 as evidenced by Kunioka and Robinson. As noted above, claim 1, from which claims 2, 5, and 12-14 depend, is amended. The combined references do not teach or suggest all of the elements of claim 1. Specifically, neither of the references teach or suggest the desirability of a cosmetic composition including particles falling within two different parameters. The claims are directed to a crosslinked product having both an average particle size of 1 to 50 μm and a distribution of particle sizes of 0.1 to 100 μm . The JP-‘542 reference is completely silent about particle size, and the JP-‘764 reference only teaches a single parameter describing particle size, without even defining what that parameter is. Accordingly, the recited references cannot render the claimed invention obvious. The Office appears to provide Robinson to remedy this deficiency. However, Robinson merely teaches that different particle sizes are possible. It provides no teaching regarding the two different parameters for particle size required in claim 1. Failing to teach all of the elements of claim 1, the cited combination cannot render claim 1, or the claims depending therefrom, obvious.

Claims 6, 8-11, and 15-17 were rejected as obvious over JP-'542 in view of Sheppard, U.S. Patent No. 4,847,078, as evidenced by Kunioka. Claim 6 is amended, and claims 8-11 and 15-17 depend therefrom. As in the discussion of claim 1 above, the cited combination of references does not teach or suggest the desirability of a cosmetic composition including particles falling within two different parameters. The claims are directed to a crosslinked product having both an average particle size of 1 to 50 μm and a distribution of particle sizes of 0.1 to 100 μm . Failing to do so, the recited references cannot render the claimed invention obvious.

The recited combinations of references do not teach all of the elements of the claimed invention. Accordingly, Applicant respectfully requests withdrawal of the rejections of the present claims.

In light of the above discussion, the present application is believed to be in condition for allowance. An early and favorable action to that effect is respectfully requested.

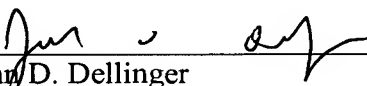
Respectfully submitted,

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EXHIBIT 1

DOCKET NO: 270262US0PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
TETSUO MIYAYAMA : EXAMINER: WEBMAN, EDWARD J.
SERIAL NO: 10/532,832 :
FILED: JANUARY 4, 2006 : GROUP ART UNIT: 1616
FOR: COSMETICS EXCELLENT IN :
TEXTURE AND OIL-DISPERSIBILITY

AMENDMENT

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Office Action dated August 30, 2007, please amend the above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks/Arguments begin on page 5 of this paper.

IN THE CLAIMS

Please amend the claims as follows:

Claim 1 (Original): A cosmetic material comprising a crosslinked product of poly- γ -glutamic acid and/or a crosslinked product of a poly- γ -glutamic acid salt having a particle size of 0.1 to 100 μm and an average particle size of 1 to 50 μm .

Claim 2 (Original): The cosmetic material according to claim 1, wherein said crosslinked product of poly- γ -glutamic acid and/or said crosslinked product of a poly- γ -glutamic acid salt is contained in an amount of 0.001 to 20% by mass.

Claim 3 (Original): The cosmetic material according to claim 1, wherein said crosslinked product of poly- γ -glutamic acid or said crosslinked product of a poly- γ -glutamic acid salt are produced by exposing at least one solution selected from the group consisting of an aqueous solution, a methyl alcohol solution and an ethyl alcohol solution of poly- γ -glutamic acid or the poly- γ -glutamic acid salt which contain poly- γ -glutamic acid in an amount of 2 to 30% by mass, to radiation for crosslinking thereof.

Claim 4 (Previously presented): The cosmetic material according to claim 3, wherein said radiation is γ -ray or electron beam.

Claim 5 (Previously presented): The cosmetic material according to claim 1, wherein said cosmetic material is used as hair cosmetic materials, skin cosmetic materials or nail cosmetic materials.

Claim 6 (Currently amended): A cosmetic material comprising an oiliness agent selected from the group consisting of vegetable oils, higher alcohols or esters thereof, higher fatty esters and liquid paraffins, and a crosslinked product of poly- γ -glutamic acid and/or a crosslinked product of a poly- γ -glutamic acid salt as an oil dispersion modifier, wherein said crosslinked product of poly- γ -glutamic acid or said crosslinked product of a poly- γ -glutamic acid salt has a particle size of 0.1 to 100 μm and an average particle size of 1 to 50 μm .

Claim 7 (Canceled).

Claim 8 (Original): The cosmetic material according to claim 6, wherein said oiliness agent is contained in an amount of 0.01 to 80% by mass, and said crosslinked product of poly- γ -glutamic acid and/or said crosslinked product of a poly- γ -glutamic acid salt are contained in an amount of 0.1 to 30% by mass.

Claim 9 (Original): The cosmetic material according to claim 6, wherein said crosslinked product of poly- γ -glutamic acid or said crosslinked product of a poly- γ -glutamic acid salt are produced by exposing at least one solution selected from the group consisting of an aqueous solution, a methyl alcohol solution and an ethyl alcohol solution of poly- γ -glutamic acid or the poly- γ -glutamic acid salt which contain poly- γ -glutamic acid in an amount of 1 to 30% by mass, to radiation for crosslinking thereof.

Claim 10 (Original): The cosmetic material according to claim 9, wherein said radiation is γ -ray or electron beam.

Claim 11 (Previously presented): The cosmetic material according to claim 6, wherein

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said cosmetic material is used as hair cosmetic materials, skin cosmetic materials or nail cosmetic materials.

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-6 and 8-11 are now pending in this application. Claim 7 is herein canceled, and claim 6 is amended to include the limitations of claim 7. No new matter is added.

In the outstanding Office Action, claims 1-11 were rejected under 35 U.S.C. § 103(a) as being obvious over JP- 2001-072764 (hereinafter "JP-'764") in view of JP-2001-354542 (hereinafter "JP-'542"). Applicant respectfully requests withdrawal of this rejection.

Claim 1 is an independent claim from which claims 2-5 depend. Claim 1 is directed to a cosmetic material comprising a crosslinked product of poly- γ -glutamic acid and/or a crosslinked product of a poly- γ -glutamic acid salt. The crosslinked product has an average particle size of 1 to 50 μm . Claim 6, as amended, is directed to a cosmetic material that includes an oiliness agent and a crosslinked product of poly- γ -glutamic acid and/or a crosslinked product of a poly- γ -glutamic acid salt as an oil dispersion modifier. The crosslinked product of poly- γ -glutamic acid or said crosslinked product of a poly- γ -glutamic acid salt has an average particle size of 1 to 50 μm .

The JP-'764 reference discloses a crosslinked polyamino acid used in cosmetics. The JP-'764 reference discloses the preferred use of polyaspartic acid as the backbone of the polyamino acid, but lists polyglutamic acid and polylysine as alternatives. The JP-'764 reference teaches a crosslinked product having an average particle size of 10 nm to 500 μm .

The JP-'542 reference discloses a moisturizer that comprises poly- γ -glutamic acid bridges formed by irradiation. However, the JP-'542 reference does not teach or suggest the particle size of the present invention.

All of the pending claims are directed to a crosslinked product having an average particle size of 1 to 50 μm . As evidenced by the present specification, cosmetics made from

crosslinked product having particle sizes of 1 to 50 μm have superior cosmetic properties as compared to cosmetics made from crosslinked product having particle sizes of 10 nm to 500 μm , the broad range taught by the JP-'764 reference. Table 1-1 on page 16 of the specification shows the cosmetic evaluation of compositions of Reference Examples 1 and 2, both comprising crosslinked products having average particle sizes of 200 μm . Table 1-2 on page 16 of the specification shows the cosmetic evaluation of Comparative Example 1, also comprising crosslinked products having an average particle size of 200 μm . These three compositions, all comprising crosslinked products having average particle sizes larger than the claimed product, were evaluated and found to have poor cosmetic characteristics (noted in the tables by scores of "B"). Table 1-2 on page 16 of the specification also shows the cosmetic evaluation of Comparative Example 3. This composition comprises crosslinked product having an average particle size of 0.5 μm , smaller in average particle size than the claimed product. This composition was evaluated and found to have poor cosmetic characteristics. In contrast to these compositions, Table 1-1 on page 16 of the specification shows the cosmetic evaluation of Examples 1 and 2, both comprising crosslinked products having average particle sizes of 10 μm , within the average particle size of the claimed product. These compositions were evaluated and found to have good cosmetic characteristics. These unexpected superior results show the nonobviousness of the claimed cosmetic materials.

In addition to the unexpected improvement seen with the smaller particle sizes, the JP-'764 reference does not teach or enable the crosslinked product of poly- γ -glutamic acid or a crosslinked product of a poly- γ -glutamic acid salt, and does not teach a product having the good oil dispersibility of the present invention. This is evidenced by the Declaration of Hajime Ito submitted in the Amendment filed November 16, 2006 (showing the superior oil dispersing ability of crosslinked poly- γ -glutamic acid in which the crosslinking was effected

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by electron beam radiation, as in the present invention, as compared with crosslinked poly- γ -glutamic acid in which the crosslinking was effected by prior art chemical methods).

Because the claimed cosmetic materials all comprise crosslinked products having average particle sizes of 1 to 50 μm , and cosmetic materials within this range have superior results as compared with the broader range disclosed in the JP-'764 reference, and because the claimed cosmetics exhibit surprisingly good oil dispersibility not taught or suggested by the references, Applicant respectfully requests the withdrawal of the rejections of claims 1-6 and 8-11, and the allowance of these claims.

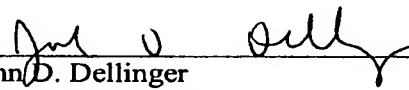
In light of the above discussion, the present application is believed to be in condition for allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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Electronic Patent Application Fee Transmittal

Application Number:	10532832			
Filing Date:	04-Jan-2006			
Title of Invention:	Cosmetics excellent in texture and oil-dispersibility			
First Named Inventor/Applicant Name:	Tetsuo Miyayama			
Filer:	Marvin Jay Spivak/Leslie Aefsky			
Attorney Docket Number:	270262US0PCT			
Filed as Large Entity				
U.S. National Stage under 35 USC 371 Filing Fees				
Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				
Extension - 1 month with \$0 paid	1251	1	120	120

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Miscellaneous:				
Total in USD (\$)				120



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,832	01/04/2006	Tetsuo Miyayama	270262USOPCT	8791
22850 7590 01/29/2008 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER WEBMAN, EDWARD J	
			ART UNIT 1616	PAPER NUMBER
			NOTIFICATION DATE 01/29/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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oblonpat@oblon.com
jgardner@oblon.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/532,832

Applicant(s)

MIYAYAMA, TETSUO

Examiner

Edward J. Webman

Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-11.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

EDWARD J. WEBMAN
FOREMAN EXAMINER
GROUP 1616

Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue unexpected results. However, one of ordinary skill would expect to find an optimum suitable particle size for a property such as grittiness, i.e. looking for minimal grittiness and maximal oil homogenization. Alternatively, if the properties demonstrated are indeed unexpected, applicants are limited to the average particle size used in the demonstrations, namely 10 μm .